

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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BILL DRAFT 2013-MG-11C [v.1] (10/24)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

11/15/2012 10:29:42 AM

Short Title: Amend Certificate of Need Laws.

(Public)

Sponsors: Representative Avila.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND CERTIFICATE OF NEED LAWS PERTAINING TO DIAGNOSTIC
3 CENTERS, SINGLE-SPECIALTY AMBULATORY SURGERY OPERATING ROOMS,
4 AND MONETARY THRESHOLD REQUIREMENTS THAT TRIGGER CERTIFICATE
5 OF NEED REQUIREMENTS.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 131E-175 is amended by adding new subdivisions to read:

8 "(13) That the relocation of a hospital's operating rooms to a facility on premises
9 separate from the premises upon which the hospital's inpatient acute care
10 beds and emergency department are located results in a costly and
11 unnecessary economic burden to the public.

12 (14) That physicians who provide single-specialty ambulatory surgery services in
13 unlicensed settings should be afforded an opportunity to obtain a license to
14 provide these services in order to ensure patient safety and the provision of
15 quality care.

16 (15) That the demand for ambulatory surgery is increasing due to advances in
17 technology and anesthesia, and single-specialty ambulatory surgery
18 operating rooms are recognized as a highly effective means of expanding
19 access while achieving cost savings regardless of the availability and
20 potential underutilization of hospital-based operating rooms."

21 **SECTION 2.** G.S. 131E-176 reads as rewritten:

22 **"§ 131E-176. Definitions.**

23 As used in this Article, unless the context clearly requires otherwise, the following terms
24 have the meanings specified:

25 (1) "Adult care home" means a facility with seven or more beds licensed under
26 Part 1 of Article 1 of Chapter 131D of the General Statutes or Chapter 131E
27 of the General Statutes that provides residential care for aged or disabled
28 persons whose principal need is a home which provides the supervision and
29 personal care appropriate to their age and disability and for whom medical
30 care is only occasional or incidental.

31 (1a) **(See note)** "Air ambulance" means aircraft used to provide air transport of
32 sick or injured persons between destinations within the State.



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- (1b) "Ambulatory surgical facility" means a facility designed for the provision of a specialty ambulatory surgical program or a multispecialty ambulatory surgical program. An ambulatory surgical facility serves patients who require local, regional or general anesthesia and a period of post-operative observation. An ambulatory surgical facility may only admit patients for a period of less than 24 hours and must provide at least one designated operating room or gastrointestinal endoscopy room, as defined in Article 5 Part 1 and Article 6, Part 4 of this Chapter, and at least one designated recovery room, have available the necessary equipment and trained personnel to handle emergencies, provide adequate quality assurance and assessment by an evaluation and review committee, and maintain adequate medical records for each patient. An ambulatory surgical facility may be operated as a part of a physician or dentist's office, provided the facility is licensed under G.S. Chapter 131E, Article 6, Part D, but the performance of incidental, limited ambulatory surgical procedures which do not constitute an ambulatory surgical program as defined in subdivision (1c) of this section and which are performed in a physician's or dentist's office does not make that office an ambulatory surgical facility.
- (1c) "Ambulatory surgical program" means a formal program for providing on a same-day basis those surgical procedures which require local, regional or general anesthesia and a period of post-operative observation to patients whose admission for more than 24 hours is determined, prior to surgery or gastrointestinal endoscopy, to be medically unnecessary.
- (2) "Bed capacity" means space used exclusively for inpatient care, including space designed or remodeled for licensed inpatient beds even though temporarily not used for such purposes. The number of beds to be counted in any patient room shall be the maximum number for which adequate square footage is provided as established by rules of the Department except that single beds in single rooms are counted even if the room contains inadequate square footage. The term "bed capacity" also refers to the number of dialysis stations in kidney disease treatment centers, including freestanding dialysis units.
- (2a) "Bone marrow transplantation services" means the process of infusing bone marrow into persons with diseases to stimulate the production of blood cells.
- (2b) "Burn intensive care services" means services provided in a unit designed to care for patients who have been severely burned.
- (2c) "Campus" means the adjacent grounds and buildings, or grounds and buildings not separated by more than a public right-of-way, of a health service facility and related health care entities.
- (2d) "Capital expenditure" means an expenditure for a project, including but not limited to the cost of construction, engineering, and equipment which under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance. Capital expenditure includes, in addition, the fair market value of an acquisition made by donation, lease, or comparable arrangement by which a person obtains equipment, the expenditure for which would have been considered a capital expenditure under this Article if the person had acquired it by purchase.
- (2e) Repealed by Session Laws 2005-325, s. 1, effective for hospices and hospice offices December 31, 2005.
- (2f) "Cardiac catheterization equipment" means the equipment used to provide cardiac catheterization services.

- (2g) "Cardiac catheterization services" means those procedures, excluding pulmonary angiography procedures, in which a catheter is introduced into a vein or artery and threaded through the circulatory system into the heart specifically to diagnose abnormalities in the motion, contraction, and blood flow of the moving heart or to perform surgical therapeutic interventions to restore, repair, or reconstruct the coronary blood vessels of the heart.
- (3) "Certificate of need" means a written order which affords the person so designated as the legal proponent of the proposed project the opportunity to proceed with the development of such project.
- (4) Repealed by Session Laws 1993, c. 7, s. 2.
- (5) "Change in bed capacity" means (i) any relocation of health service facility beds, or dialysis stations from one licensed facility or campus to another, or (ii) any redistribution of health service facility bed capacity among the categories of health service facility bed as defined in G.S. 131E-176(9c), or (iii) any increase in the number of health service facility beds, or dialysis stations in kidney disease treatment centers, including freestanding dialysis units.
- (5a) "Chemical dependency treatment facility" means a public or private facility, or unit in a facility, which is engaged in providing 24-hour a day treatment for chemical dependency or substance abuse. This treatment may include detoxification, administration of a therapeutic regimen for the treatment of chemically dependent or substance abusing persons and related services. The facility or unit may be:
- a. A unit within a general hospital or an attached or freestanding unit of a general hospital licensed under Article 5, Chapter 131E, of the General Statutes,
 - b. A unit within a psychiatric hospital or an attached or freestanding unit of a psychiatric hospital licensed under Article 1A of General Statutes Chapter 122 or Article 2 of General Statutes Chapter 122C,
 - c. A freestanding facility specializing in treatment of persons who are substance abusers or chemically dependent licensed under Article 1A of General Statutes Chapter 122 or Article 2 of General Statutes Chapter 122C; and may be identified as "chemical dependency, substance abuse, alcoholism, or drug abuse treatment units," "residential chemical dependency, substance abuse, alcoholism or drug abuse facilities," or by other names if the purpose is to provide treatment of chemically dependent or substance abusing persons, but shall not include social setting detoxification facilities, medical detoxification facilities, halfway houses or recovery farms.
- (5b) "Chemical dependency treatment beds" means beds that are licensed for the inpatient treatment of chemical dependency. Residential treatment beds for the treatment of chemical dependency or substance abuse are chemical dependency treatment beds. Chemical dependency treatment beds shall not include beds licensed for detoxification.
- (6) "Department" means the North Carolina Department of Health and Human Services.
- (7) To "develop" when used in connection with health services, means to undertake those activities which will result in the offering of institutional health service or the incurring of a financial obligation in relation to the offering of such a service.

- (7a) ~~"Diagnostic center" means a freestanding facility, program, or provider, including but not limited to, physicians' offices, clinical laboratories, radiology centers, and mobile diagnostic programs, in which the total cost of all the medical diagnostic equipment utilized by the facility which cost ten thousand dollars (\$10,000) or more exceeds five hundred thousand dollars (\$500,000). In determining whether the medical diagnostic equipment in a diagnostic center costs more than five hundred thousand dollars (\$500,000), the costs of the equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and making operational the equipment shall be included. The capital expenditure for the equipment shall be deemed to be the fair market value of the equipment or the cost of the equipment, whichever is greater.~~
- (7b) "Expedited review" means the status given to an application's review process when the applicant petitions for the review and the Department approves the request based on findings that all of the following are met:
- The review is not competitive.
 - The proposed capital expenditure is less than five million dollars (\$5,000,000).
 - A request for a public hearing is not received within the time frame defined in G.S. 131E-185.
 - The agency has not determined that a public hearing is in the public interest.
- (7c) "Gamma knife" means equipment which emits photon beams from a stationary radioactive cobalt source to treat lesions deep within the brain and is one type of stereotactic radiosurgery.
- (7d) "Gastrointestinal endoscopy room" means a room used for the performance of procedures that require the insertion of a flexible endoscope into a gastrointestinal orifice to visualize the gastrointestinal lining and adjacent organs for diagnostic or therapeutic purposes.
- (8),(9) Repealed by Session Laws 1987, c. 511, s. 1.
- (9a) "Health service" means an organized, interrelated medical, diagnostic, therapeutic, and/or rehabilitative activity that is integral to the prevention of disease or the clinical management of a sick, injured, or disabled person. "Health service" does not include administrative and other activities that are not integral to clinical management.
- (9b) "Health service facility" means a hospital; long-term care hospital; psychiatric facility; rehabilitation facility; nursing home facility; adult care home; kidney disease treatment center, including freestanding hemodialysis units; intermediate care facility for the mentally retarded; home health agency office; chemical dependency treatment facility; diagnostic center; hospice office, hospice inpatient facility, hospice residential care facility; and ambulatory surgical facility.
- (9c) "Health service facility bed" means a bed licensed for use in a health service facility in the categories of (i) acute care beds; (ii) psychiatric beds; (iii) rehabilitation beds; (iv) nursing home beds; (v) intermediate care beds for the mentally retarded; (vi) chemical dependency treatment beds; (vii) hospice inpatient facility beds; (viii) hospice residential care facility beds; (ix) adult care home beds; and (x) long-term care hospital beds.
- (10) "Health maintenance organization (HMO)" means a public or private organization which has received its certificate of authority under Article 67

of Chapter 58 of the General Statutes and which either is a qualified health maintenance organization under Section 1310(d) of the Public Health Service Act or:

- a. Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: usual physician services, hospitalization, laboratory, X ray, emergency and preventive services, and out-of-area coverage;
- b. Is compensated, except for copayments, for the provision of the basic health care services listed above to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and
- c. Provides physicians' services primarily (i) directly through physicians who are either employees or partners of such organizations, or (ii) through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.

(10a) "Heart-lung bypass machine" means the equipment used to perform extra-corporeal circulation and oxygenation during surgical procedures.

(11) Repealed by Session Laws 1991, c. 692, s. 1.

(12) "Home health agency" means a private organization or public agency, whether owned or operated by one or more persons or legal entities, which furnishes or offers to furnish home health services.

"Home health services" means items and services furnished to an individual by a home health agency, or by others under arrangements with such others made by the agency, on a visiting basis, and except for paragraph e. of this subdivision, in a place of temporary or permanent residence used as the individual's home as follows:

- a. Part-time or intermittent nursing care provided by or under the supervision of a registered nurse;
- b. Physical, occupational or speech therapy;
- c. Medical social services, home health aid services, and other therapeutic services;
- d. Medical supplies, other than drugs and biologicals and the use of medical appliances;
- e. Any of the foregoing items and services which are provided on an outpatient basis under arrangements made by the home health agency at a hospital or nursing home facility or rehabilitation center and the furnishing of which involves the use of equipment of such a nature that the items and services cannot readily be made available to the individual in his home, or which are furnished at such facility while he is there to receive any such item or service, but not including transportation of the individual in connection with any such item or service.

(13) "Hospital" means a public or private institution which is primarily engaged in providing to inpatients, by or under supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. The term includes all

- 1 facilities licensed pursuant to G.S. 131E-77 of the General Statutes, except
2 long-term care hospitals.
- 3 (13a) "Hospice" means any coordinated program of home care with provision for
4 inpatient care for terminally ill patients and their families. This care is
5 provided by a medically directed interdisciplinary team, directly or through
6 an agreement under the direction of an identifiable hospice administration. A
7 hospice program of care provides palliative and supportive medical and
8 other health services to meet the physical, psychological, social, spiritual and
9 special needs of patients and their families, which are experienced during the
10 final stages of terminal illness and during dying and bereavement.
- 11 (13b) "Hospice inpatient facility" means a freestanding licensed hospice facility or
12 a designated inpatient unit in an existing health service facility which
13 provides palliative and supportive medical and other health services to meet
14 the physical, psychological, social, spiritual, and special needs of terminally
15 ill patients and their families in an inpatient setting. For purposes of this
16 Article only, a hospital which has a contractual agreement with a licensed
17 hospice to provide inpatient services to a hospice patient as defined in
18 G.S. 131E-201(4) and provides those services in a licensed acute care bed is
19 not a hospice inpatient facility and is not subject to the requirements in
20 G.S. 131E-176(5)(ii) for hospice inpatient beds.
- 21 (13c) "Hospice residential care facility" means a freestanding licensed hospice
22 facility which provides palliative and supportive medical and other health
23 services to meet the physical, psychological, social, spiritual, and special
24 needs of terminally ill patients and their families in a group residential
25 setting.
- 26 (14) Repealed by Session Laws 1987, c. 511, s. 1.
- 27 (14a) "Intermediate care facility for the mentally retarded" means facilities
28 licensed pursuant to Article 2 of Chapter 122C of the General Statutes for
29 the purpose of providing health and habilitative services based on the
30 developmental model and principles of normalization for persons with
31 mental retardation, autism, cerebral palsy, epilepsy or related conditions.
- 32 (14b) Repealed by Session Laws 1991, c. 692, s. 1.
- 33 (14c) Reserved for future codification.
- 34 (14d) Repealed by Session Laws 2001-234, s. 2, effective January 1, 2002.
- 35 (14e) "Kidney disease treatment center" means a facility that is certified as an
36 end-stage renal disease facility by the Centers for Medicare and Medicaid
37 Services, Department of Health and Human Services, pursuant to 42 C.F.R.
38 § 405.
- 39 (14f) Reserved for future codification.
- 40 (14g) "Linear accelerator" means a machine used to produce ionizing radiation in
41 excess of 1,000,000 electron volts in the form of a beam of electrons or
42 photons to treat cancer patients.
- 43 (14h) Reserved for future codification.
- 44 (14i) "Lithotripter" means extra-corporeal shock wave technology used to treat
45 persons with kidney stones and gallstones.
- 46 (14j) Reserved for future codification.
- 47 (14k) "Long-term care hospital" means a hospital that has been classified and
48 designated as a long-term care hospital by the Centers for Medicare and
49 Medicaid Services, Department of Health and Human Services, pursuant to
50 42 C.F.R. § 412.
- 51 (14l) Reserved for future codification.

- (14m) "Magnetic resonance imaging scanner" means medical imaging equipment that uses nuclear magnetic resonance.
- (14n) Reserved for future codification.
- (14o) "Major medical equipment" means a single unit or single system of components with related functions which is used to provide medical and other health services and which costs more than ~~seven hundred fifty thousand dollars (\$750,000)~~ one million five hundred thousand dollars (\$1,500,000). In determining whether the major medical equipment costs more than ~~seven hundred fifty thousand dollars (\$750,000)~~ one million five hundred thousand dollars (\$1,500,000), the costs of the equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and making operational the major medical equipment shall be included. The capital expenditure for the equipment shall be deemed to be the fair market value of the equipment or the cost of the equipment, whichever is greater. Major medical equipment does not include replacement equipment as defined in this section.
- (15) Repealed by Session Laws 1987, c. 511, s. 1.
- (15a) "Multispecialty ambulatory surgical program" means a formal program for providing on a same-day basis surgical procedures for at least three of the following specialty areas: gynecology, otolaryngology, plastic surgery, general surgery, ophthalmology, orthopedic, or oral surgery.
- (15b) "Neonatal intensive care services" means those services provided by a health service facility to high-risk newborn infants who require constant nursing care, including but not limited to continuous cardiopulmonary and other supportive care.
- (16) "New institutional health services" means any of the following:
- a. The construction, development, or other establishment of a new health service facility.
 - b. Except as otherwise provided in G.S. 131E-184(e), the obligation by any person of a capital expenditure exceeding ~~two-four~~ million dollars ~~(\$2,000,000)~~ (\$4,000,000) to develop or expand a health service or a health service facility, or which relates to the provision of a health service. The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities, including staff effort and consulting and other services, essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made shall be included in determining if the expenditure exceeds ~~two-four~~ million dollars ~~(\$2,000,000)~~ (\$4,000,000).
 - c. Any change in bed capacity as defined in G.S. 131E-176(5).
 - d. The offering of dialysis services or home health services by or on behalf of a health service facility if those services were not offered within the previous 12 months by or on behalf of the facility.
 - e. A change in a project that was subject to certificate of need review and for which a certificate of need was issued, if the change is proposed during the development of the project or within one year after the project was completed. For purposes of this subdivision, a change in a project is a change of more than fifteen percent (15%) of the approved capital expenditure amount or the addition of a health

service that is to be located in the facility, or portion thereof, that was constructed or developed in the project.

f. The development or offering of a health service as listed in this subdivision by or on behalf of any person:

1. Bone marrow transplantation services.

2. Burn intensive care services.

2a. Cardiac catheterization services, except cardiac catheterization services provided on equipment furnished by a person authorized to operate such equipment in North Carolina pursuant to either a certificate of need issued for mobile cardiac catheterization equipment or a settlement agreement executed by the Department for provision of cardiac catheterization services.

3. Neonatal intensive care services.

4. Open-heart surgery services.

5. Solid organ transplantation services.

fi. The acquisition by purchase, donation, lease, transfer, or comparable arrangement of any of the following equipment by or on behalf of any person:

1. Air ambulance.

2. Repealed by Session Laws 2005-325, s. 1, effective for hospices and hospice offices December 31, 2005.

3. Cardiac catheterization equipment.

4. Gamma knife.

5. Heart-lung bypass machine.

5a. Linear accelerator.

6. Lithotripter.

7. Magnetic resonance imaging scanner.

8. Positron emission tomography scanner.

9. Simulator.

g. to k. Repealed by Session Laws 1987, c. 511, s. 1.

l. The purchase, lease, or acquisition of any health service facility, or portion thereof, or a controlling interest in the health service facility or portion thereof, if the health service facility was developed under a certificate of need issued pursuant to G.S. 131E-180.

m. Any conversion of nonhealth service facility beds to health service facility beds.

n. The construction, development or other establishment of a hospice, hospice inpatient facility, or hospice residential care facility;

o. The opening of an additional office by an existing home health agency or hospice within its service area as defined by rules adopted by the Department; or the opening of any office by an existing home health agency or hospice outside its service area as defined by rules adopted by the Department.

p. The acquisition by purchase, donation, lease, transfer, or comparable arrangement by any person of major medical equipment.

q. The relocation of a health service facility from one service area to another.

r. The conversion of a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or the addition of a specialty to a specialty ambulatory surgical program.

- s. The furnishing of mobile medical equipment to any person to provide health services in North Carolina, which was not in use in North Carolina prior to the adoption of this provision, if such equipment would otherwise be subject to review in accordance with G.S. 131E-176(16)(f1.) or G.S. 131E-176(16)(p) if it had been acquired in North Carolina.
- t. Repealed by Session Laws 2001-242, s. 4, effective June 23, 2001.
- u. The construction, development, establishment, increase in the number, or relocation of an operating ~~room~~ room, including a single-specialty ambulatory surgery operating room, or gastrointestinal endoscopy room in a licensed health service facility, other than the relocation of an operating room or gastrointestinal endoscopy room within the same building or on the same grounds or to grounds not separated by more than a public right-of-way adjacent to the grounds where the operating room or gastrointestinal endoscopy room is currently located.
- v. The change in designation, in a licensed health service facility, of an operating room to a gastrointestinal endoscopy room or change in designation of a gastrointestinal endoscopy room to an operating room that results in a different number of each type of room than is reflected on the health service facility's license in effect as of January 1, 2005.
- (17) "North Carolina State Health Coordinating Council" means the Council that prepares, with the Department of Health and Human Services, the State Medical Facilities Plan.
- (17a) "Nursing care" means:
- a. Skilled nursing care and related services for residents who require medical or nursing care;
- b. Rehabilitation services for the rehabilitation of injured, disabled, or sick persons; or
- c. Health-related care and services provided on a regular basis to individuals who because of their mental or physical condition require care and services above the level of room and board, which can be made available to them only through institutional facilities.
- These are services which are not primarily for the care and treatment of mental diseases.
- (17b) "Nursing home facility" means a health service facility whose bed complement of health service facility beds is composed principally of nursing home facility beds.
- (18) To "offer," when used in connection with health services, means that the person holds himself out as capable of providing, or as having the means for the provision of, specified health services.
- (18a) Repealed by Session Laws 2005-325, s. 1, effective for hospices and hospice offices December 31, 2005.
- (18b) "Open-heart surgery services" means the provision of surgical procedures that utilize a heart-lung bypass machine during surgery to correct cardiac and coronary artery disease or defects.
- (18c) "Operating room" means a room used for the performance of surgical procedures requiring one or more incisions and that is required to comply with all applicable licensure codes and standards for an operating room.

- (19) "Person" means an individual, a trust or estate, a partnership, a corporation, including associations, joint stock companies, and insurance companies; the State, or a political subdivision or agency or instrumentality of the State.
- (19a) "Positron emission tomography scanner" means equipment that utilizes a computerized radiographic technique that employs radioactive substances to examine the metabolic activity of various body structures.
- (20) "Project" or "capital expenditure project" means a proposal to undertake a capital expenditure that results in the offering of a new institutional health service as defined by this Article. A project, or capital expenditure project, or proposed project may refer to the project from its earliest planning stages up through the point at which the specified new institutional health service may be offered. In the case of facility construction, the point at which the new institutional health service may be offered must take place after the facility is capable of being fully licensed and operated for its intended use, and at that time it shall be considered a health service facility.
- (21) "Psychiatric facility" means a public or private facility licensed pursuant to Article 2 of Chapter 122C of the General Statutes and which is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons.
- (22) "Rehabilitation facility" means a public or private inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent, professional supervision.
- (22a) "Replacement equipment" means equipment that costs less than ~~two-four~~ million dollars ~~(\$2,000,000),(\$4,000,000)~~ and is purchased for the sole purpose of replacing comparable medical equipment currently in use which will be sold or otherwise disposed of when replaced. In determining whether the replacement equipment costs less than ~~two-four~~ million dollars ~~(\$2,000,000),(\$4,000,000)~~, the costs of equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and making operational the replacement equipment shall be included. The capital expenditure for the equipment shall be deemed to be the fair market value of the equipment or the cost of the equipment, whichever is greater.
- (23) Repealed by Session Laws 1991, c. 692, s. 1.
- (24) Repealed by Session Laws 1993, c. 7, s. 2.
- (24a) "Service area" means the area of the State, as defined in the State Medical Facilities Plan or in rules adopted by the Department, which receives services from a health service facility.
- (24b) "Simulator" means a machine that produces high quality diagnostic radiographs and precisely reproduces the geometric relationships of megavoltage radiation therapy equipment to the patient.
- (24c) ~~Reserved for future codification.~~ "Single specialty ambulatory surgery operating room" means a designated operating room located in a licensed ambulatory surgical facility that is used to perform same-day surgical procedures in any one of the single specialty areas identified by the American College of Surgeons. For the purpose of this subdivision, "same-day surgical procedures" includes pain injections by orthopedists, physiatrists, and anesthesiologists.

(24d) "Solid organ transplantation services" means the provision of surgical procedures and the interrelated medical services that accompany the surgery to remove an organ from a patient and surgically implant an organ from a donor.

(24e) Reserved for future codification.

(24f) "Specialty ambulatory surgical program" means a formal program for providing on a same-day basis surgical procedures for only the specialty areas identified on the ambulatory surgical facility's 1993 Application for Licensure as an Ambulatory Surgical Center and authorized by its certificate of need.

(25) "State Medical Facilities Plan" means the plan prepared by the Department of Health and Human Services and the North Carolina State Health Coordinating Council, and approved by the Governor. In preparing the Plan, the Department and the State Health Coordinating Council shall maintain a mailing list of persons who have requested notice of public hearings regarding the Plan. Not less than 15 days prior to a scheduled public hearing, the Department shall notify persons on its mailing list of the date, time, and location of the hearing. The Department shall hold at least one public hearing prior to the adoption of the proposed Plan and at least six public hearings after the adoption of the proposed Plan by the State Health Coordinating Council. The Council shall accept oral and written comments from the public concerning the Plan.

(26) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1002, s. 9.

(27) Repealed by Session Laws 1987, c. 511, s. 1."

SECTION 3.(a) G.S. 131E-178 reads as rewritten:

"§ 131E-178. Activities requiring certificate of need.

(a) ~~No~~ Except as otherwise provided in subsections (a1) and (a2) of this section, no person shall offer or develop a new institutional health service without first obtaining a certificate of need from the ~~Department; provided, however, no~~ Department.

(a1) Any person proposing to obtain a license to establish an ambulatory surgical facility for the provision of gastrointestinal endoscopy procedures shall be required to obtain a certificate of need to license that setting as an ambulatory surgical facility, with the existing number of gastrointestinal endoscopy rooms, except for a person who (i) provides gastrointestinal endoscopy procedures in one or more gastrointestinal endoscopy rooms located in a nonlicensed setting, shall be required to obtain a certificate of need to license that setting as an ambulatory surgical facility with the existing number of gastrointestinal endoscopy rooms, provided that setting and (ii) meets all of the following criteria:

(1) The ~~person's~~ license application is postmarked for delivery to the Division of Health Service Regulation by December 31, 2006;

(2) The applicant verifies, by affidavit submitted to the Division of Health Service Regulation within 60 days of the effective date of this act, that the facility is in operation as of the effective date of this act or that the completed application for the building permit for the facility was submitted by the effective date of this act;

(3) The facility has been accredited by The Accreditation Association for Ambulatory Health Care, The Joint Commission on Accreditation of Healthcare Organizations, or The American Association for Accreditation of Ambulatory Surgical Facilities by the time the license application is postmarked for delivery to the Division of Health Service Regulation of the Department; and

- (4) The license application includes a commitment and plan for serving indigent and medically underserved populations.

All other persons proposing to obtain a license to establish an ambulatory surgical facility for the provision of gastrointestinal endoscopy procedures shall be required to obtain a certificate of need. The annual State Medical Facilities Plan shall not include policies or need determinations that limit the number of gastrointestinal endoscopy rooms that may be approved.

(a2) Any person proposing to obtain a license to establish single-specialty ambulatory operating rooms in an ambulatory surgery facility shall be required to obtain a certificate of need, except for a person who (i) provides single-specialty ambulatory surgery procedures in one or more operating rooms located in a nonlicensed setting and (ii) meets all of the following criteria:

- (1) The person's license application is postmarked for delivery to the Division of Health Service Regulation by December 31, 2013.
- (2) The applicant verifies, by affidavit submitted to the Division of Health Service Regulation within 60 days of the effective date of this act, that the facility is in operation as of the effective date of this act or that the completed application for the building permit for the facility was submitted by the effective date of this act;
- (3) The facility has been accredited by The Accreditation Association for Ambulatory Health Care, The Joint Commission on Accreditation of Healthcare Organizations, or The American Association for Accreditation of Ambulatory Surgical Facilities by the time the license application is postmarked for delivery to the Division of Health Service Regulation of the Department; and
- (4) The license application includes at least all of the following:
 - a. A commitment, plan, and policies and procedures for serving indigent and medically underserved populations.
 - b. Projected charges for the 20 most common surgical procedures to be performed in the proposed single-specialty ambulatory surgery operating rooms.

All other persons proposing to obtain a license to establish single-specialty ambulatory operating rooms within an ambulatory surgical facility shall be required to obtain a certificate of need. The annual State Medical Facilities Plan shall not include policies or need determinations that limit the number of single-specialty ambulatory surgery operating rooms that may be approved. However, the Department shall not approve an application for a single-specialty ambulatory surgery operating room in any ambulatory surgical facility within a county in which a licensed critical access hospital, as defined in 42 CFR § 400.202, is located. The annual State Medical Facilities Plan also shall not include policies or need determinations that limit the relocation and replacement of existing operating rooms, including single-specialty ambulatory operating rooms. However, the Department shall not approve an application for the relocation of a hospital's operating room to a facility on premises separate from the premises upon which a hospital's inpatient acute care beds and emergency department are located if approval would result in the hospital obtaining reimbursement for single-specialty ambulatory surgery procedures at a rate higher than the rate paid to ambulatory surgery centers under a government sponsored health insurance or medical assistance program.

(b) No person shall make an acquisition by donation, lease, transfer, or comparable arrangement without first obtaining a certificate of need from the Department, if the acquisition would have been a new institutional health service if it had been made by purchase. In determining whether an acquisition would have been a new institutional health service, the capital expenditure for the asset shall be deemed to be the fair market value of the asset or the cost of the asset, whichever is greater.

(c) No person shall incur an obligation for a capital expenditure which is a new institutional health service without first obtaining a certificate of need from the Department. An obligation for a capital expenditure is incurred when:

(1) An enforceable contract, excepting contracts which are expressly contingent upon issuance of a certificate of need, is entered into by a person for the construction, acquisition, lease or financing of a capital asset;

(2) A person takes formal action to commit funds for a construction project undertaken as his own contractor; or

(3) In the case of donated property, the date on which the gift is completed.

(d) Where the estimated cost of a proposed capital expenditure, including the fair market value of equipment acquired by purchase, lease, transfer, or other comparable arrangement, is certified by a licensed architect or engineer to be equal to or less than the expenditure minimum for capital expenditure for new institutional health services, such expenditure shall be deemed not to exceed the amount for new institutional health services regardless of the actual amount expended, provided that the following conditions are met:

(1) The certified estimated cost is prepared in writing 60 days or more before the obligation for the capital expenditure is incurred. Certified cost estimates shall be available for inspection at the facility and sent to the Department upon its request.

(2) The facility on whose behalf the expenditure was made notifies the Department in writing within 30 days of the date on which such expenditure is made if the expenditure exceeds the expenditure minimum for capital expenditures. The notice shall include a copy of the certified cost estimate.

(e) The Department may grant certificates of need which permit capital expenditures only for predevelopment activities. Predevelopment activities include the preparation of architectural designs, plans, working drawings, or specifications, the preparation of studies and surveys, and the acquisition of a potential site."

SECTION 4. G.S. 131E-182(a) reads as rewritten:

"(a) The Department in its rules shall establish schedules for submission and review of completed applications. The schedules shall provide that applications for similar proposals in the same service area will be reviewed together. However, the Department is prohibited from scheduling a review prior to February 1, 2013, for certificate of need applications that propose to establish a licensed single-specialty ambulatory operating room within an ambulatory surgery facility.

(b) An application for a certificate of need shall be made on forms provided by the Department. The application forms, which may vary according to the type of proposal, shall require such information as the Department, by its rules deems necessary to conduct the review. An applicant shall be required to furnish only that information necessary to determine whether the proposed new institutional health service is consistent with the review criteria implemented under G.S. 131E-183 and with duly adopted standards, plans and criteria. The application form for a certificate of need to establish a single-specialty ambulatory surgery operating room within an ambulatory surgery facility shall require the applicant to (i) include a written commitment, plan, and policies and procedures for serving indigent and medically underserved populations, (ii) furnish the projected charges for the 20 most common surgical procedures to be performed in the proposed operating room, and (iii) demonstrate that it is performing or

1 reasonably expects to perform at least 800 single-specialty ambulatory procedures per licensed
2 single-specialty ambulatory operating room per year.

3 (c) An application fee is imposed on an applicant for a certificate of need. An applicant
4 must submit the fee with the application. The fee is not refundable, regardless of whether a
5 certificate of need is issued. Fees collected under this section shall be credited to the General
6 Fund as nontax revenue. The application fee is five thousand dollars (\$5,000) plus an amount
7 equal to three-tenths of one percent (.3%) of the amount of the capital expenditure proposed in
8 the application that exceeds one million dollars (\$1,000,000). In no event may the fee exceed
9 fifty thousand dollars (\$50,000)."

10 **SECTION 5.** G.S. 131E-184(a) is amended by adding a new subdivision to read:

11 "(10) To develop, acquire, or replace a freestanding facility, program, or provider,
12 including but not limited to, physicians' offices, clinical laboratories,
13 radiology centers, and mobile diagnostic programs, in which the total cost of
14 all the medical diagnostic equipment utilized by the facility which cost ten
15 thousand dollars (\$10,000) or more exceeds five hundred thousand dollars
16 (\$500,000), unless a new institutional health service other than those defined
17 in G.S. 131E-176(16)b. is offered or developed in the building."

18 **SECTION 6.** G.S. 131E-184(e) reads as rewritten:

19 "(e) The Department shall exempt from certificate of need review a capital expenditure
20 that exceeds the ~~two-four~~ million dollar ~~(\$2,000,000)~~(\$4,000,000) threshold set forth in
21 G.S. 131E-176(16)b. if all of the following conditions are met:

22 (1) The proposed capital expenditure would:

- 23 a. Be used solely for the purpose of renovating, replacing on the same
24 site, or expanding an existing:
25 1. Nursing home facility,
26 2. Adult care home facility, or
27 3. Intermediate care facility for the mentally retarded; and
28 b. Not result in a change in bed capacity, as defined in
29 G.S. 131E-176(5), or the addition of a health service facility or any
30 other new institutional health service other than that allowed in
31 G.S. 131E-176(16)b.

32 (2) The entity proposing to incur the capital expenditure provides prior written
33 notice to the Department, which notice includes documentation that
34 demonstrates that the proposed capital expenditure would be used for one or
35 more of the following purposes:

- 36 a. Conversion of semiprivate resident rooms to private rooms.
37 b. Providing innovative, homelike residential dining spaces, such as
38 cafes, kitchenettes, or private dining areas to accommodate residents
39 and their families or visitors.
40 c. Renovating, replacing, or expanding residential living or common
41 areas to improve the quality of life of residents."

42 **SECTION 7.** Nothing in this act shall be construed to reflect any legislative intent
43 as to the circumstances under which Medicare or Medicaid certification may be obtained for a
44 provider of ambulatory surgery services.

45 **SECTION 8.** This act is effective when it becomes law. Section 4 of this act
46 expires on the effective date of administrative rules adopted consistent with the provisions of
47 this act regarding the number of single-specialty surgery procedures performed or projected to
48 be performed by applicants seeking to establish a licensed single-specialty ambulatory surgery
49 operating room.